

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

MATTHEW C.G.,<sup>1</sup>

Plaintiff,

v.

Civil No. 2:22cv453

MARTIN O'MALLEY,<sup>2</sup>  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

FINAL ORDER

Plaintiff, Matthew G., brought this action under 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking judicial review of the final decision of the Commissioner of Social Security ("Defendant" or "Commissioner") denying Plaintiff's applications for a period of disability and disability insurance benefits under Title II of the Social Security Act. ECF. No. 20, at 1. The matter was referred to a United States Magistrate Judge for a Report and Recommendation ("R&R"), pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72(b) of the Federal Rules of Civil Procedure. The Magistrate Judge filed

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<sup>1</sup> The Committee on Court Administration and Case Management of the Judicial Conference of the United States has recommended that federal courts use only the first name and last initial of any non-government parties in Social Security cases due to privacy concerns endemic to such cases.

<sup>2</sup> The Court substitutes Martin O'Malley, sworn in as Commissioner on December 20, 2023, for Acting Commissioner Kilolo Kijakazi as Defendant in this suit pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. No further action need be taken to continue this suit as stated in the last sentence of section 205(g) of the Social Security Act. 42 U.S.C. § 405(g).

the R&R on December 5, 2023, recommending that Plaintiff's motion for summary judgment be granted in part, Defendant's motion for summary judgment be denied, and that the case be remanded to the Commissioner for further proceedings consistent with the R&R. ECF No. 20, at 43.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's R&R, and the time for filing objections has expired.

Having reviewed the relevant portions of the record and finding no clear error in the Magistrate Judge's findings or reasoning, the Court hereby **ADOPTS** the findings and recommendations set forth in the R&R of the United States Magistrate Judge filed on December 5, 2023.<sup>3</sup> ECF No. 20. Accordingly, Plaintiff's motion for summary judgment is **GRANTED in part**, ECF No. 11, Defendant's motion for summary judgment is **DENIED**, ECF No. 17, and the case is **REMANDED** to the Commissioner for further proceedings consistent with the R&R. On remand, the ALJ "should reexamine the persuasiveness of Dr. Fischetto's opinions and, in doing so, evaluate the reasons for any treatment noncompliance by [P]laintiff, consistent with the guidance in SSR 16-3p." ECF No. 20, at 43. Additionally, the ALJ should

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<sup>3</sup> As no objections to the R&R were filed, this Court must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

"consider Dr. Fischetto's supplemental opinions provided to the Appeals Council in or about late June 2022, about the significance, if any, of [P]laintiff's medication regimen and his ADLs relative to his ability to sustain full-time work." Id.

The Clerk is REQUESTED to forward a copy of this Final Order to all counsel of record.

IT IS SO ORDERED.

/s/ 

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Mark S. Davis  
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
February 23, 2024